

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

Crl.MC.No. 2585 of 2006()

CC.651/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,
NEDUMANGAD
.....

PETITIONER: ACCUSED

1. BINU KUMAR, AGED 32, S/O. KRISHNA
PILLAI, PANAYAMCHERI VEEDU,
NAGACHERY, ANADU MURI, NEDUMANGADU.
2. ISSAC DISSELVA, AGED 36,
S/O. GOPALAKRISHNAN NADAR,
PANAYIL VEEDU, ENIYOTTUKONAM, NEDUMANGADU.
3. SAJI, AGED 26, S/O. SOMAN,
NAGACHERI VADAKKEVILA VEEDU,
NEDUMANGADU.

BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENTS: DEFACTO COMPLAINANT AND STATE

1. RAJENDRAN, S/O. BHASKARA PILLAI,
CHANDRIKAVILASOM VEEDU, NAGACHERY,
ANADU VILLAGE, NEDUMANGADU.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.RANJITHLAL S.T
R2 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 02/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 2585 of 2006

Dated this the 2nd day of February, 2007

ORDER

The petitioners are accused in a prosecution launched against them under Sections 323, 324, 294(b) and 506(i) r/w. 34 I.P.C. Proceedings have been initiated against them on the basis of a private complaint filed by the first respondent/complainant. In the said complaint the first respondent/complainant had raised allegations about an incident which had allegedly taken place at 10.30 p.m. on 26.6.2000.

2. The learned counsel for the petitioners contends that this is an eminently fit case where the powers under Section 482 Cr.P.C. can and ought to be invoked to quash the proceedings. The learned Magistrate has taken cognizance in total disregard of the established principles. The learned Magistrate has not alertly applied his mind to the relevant circumstances at all. This has been a mechanical act of issuing process against the accused without due, careful and cautious application of mind. The learned Magistrate appears to have totally disregarded the trauma to which a person will be subjected to if a

criminal adjudicatory process were undeservedly initiated against him.

3. The complainant alleged in the complaint that at 10.30 p.m. on 26.6.2000 the three accused persons - petitioners herein - had gone to the tea shop of the complainant and had indulged in the alleged overt acts. Prior animosity is said to be the alleged motive. In the complaint it is alleged that the complainant had gone to the police station on the same day and had lodged a complaint. The police had referred him to the doctor and he was treated as an inpatient, it is stated in the complaint.

4. As stated earlier, the complaint was filed only on 7.8.2002. The alleged incident occurred on 26.6.2000 and the complaint is filed after a lapse of about 2 years and 2 months. No explanation whatsoever is offered as to why there is such gross delay in filing such complaint. The learned Magistrate recorded the sworn statement of the complainant and another witness under Section 200 Cr.P.C. and straight away proceeded to issue process against all the three petitioners.

5. The learned counsel for the petitioners submits that as a matter of fact no incident at all did take place in the manner alleged by the prosecution. An F.I.R. was registered. After due investigation, a case was registered as C.C.No.761 of 2000 against five accused persons. It is during

the pendency of the said proceedings, with oblique and malafide motive the criminal adjudicatory process is unjustifiably initiated against the petitioners by a complaint dt. 7.8.2002. On the face of it the learned Magistrate must have realised that the complaint is not a straight and honest one. Any prudent person must have smelt that the attempt was to retaliate against the petitioners in view of C.C.761 of 2000, which had already been taken cognizance of and registered against the complainant and others.

6. The learned counsel for the petitioners further points out that the only other witness, whose sworn statement was recorded under Section 200 Cr.P.C., was the 4th accused in C.C.761/2000. He is none other than the brother-in-law of the complainant. The counsel further points out that there are incongruities between the statement of the complainant on oath and the statement in the complaint filed by him. Though in the complaint there is a blanket assertion that a complaint was lodged before the police and the police had referred the complainant to the doctor, the sworn statement advances a totally different version. According to him, no statement had been recorded by the police at all.

7. The learned counsel for the petitioners further points out that the treatment certificate, which is relied on by the complainant, a copy of which is produced as Annex.A4, does not at all reveal that any requisition was issued by the police to the doctor to examine the complainant. The wound certificate has not been produced. The doctor was not examined.

8. In these circumstances the learned counsel for the petitioners submits that cognizance taken against the petitioners is totally without any justification. The first accused is the victim, who had suffered the injuries in C.C. 761 of 2000. Accused 2 and 3 are the occurrence witnesses cited by the prosecution in C.C. 761 of 2000. The complaint is filed only on 7.8.2002, though the incident had taken place on 26.6.2000. No explanation whatsoever is seen offered for the delay in filing the complaint. The averments in the complaint are not congruent to the assertions in the sworn statement. In these circumstances the learned Magistrate erred in taking cognizance, submits the learned counsel for the petitioners.

9. The learned counsel for the first respondent, on the contrary, submits that the mere fact that there is delay is no reason for the Magistrate to refuse to take cognizance. There is no contention that the allegations are barred by limitation under the Cr.P.C. In these circumstances the mere fact

that there was delay is not sufficient reason for the learned Magistrate to refuse to invoke his jurisdiction to issue process under Section 204 Cr.P.C.

10. I have carefully considered the submissions of the counsel for the rival contestants. I have perused the records produced in this case. I note that the trial in C.C. 761 of 2000 is already over and all the accused have been found guilty, convicted and sentenced. It is not explained to me how C.C.761 of 2000 was disposed of by the learned Magistrate even after it was brought to his notice that C.C.181 of 2003 (i.e. the earlier number of this proceedings, which stands renumbered as C.C.651 of 2005) was pending as is revealed from the fact that Exts.D2 and D3 were marked in the said proceedings.

11. Be that as it may, I must say that I am disturbed to note the manner in which cognizance has lightly been taken by the learned Magistrate. Any careful and cautious mind must insist on a proper enquiry under Section 202 Cr.P.C. in the peculiar facts and circumstances of this case before the crucial decision is taken to issue process under Section 204 Cr.P.C. When the complainant was examined, he had not offered any explanation for the gross delay in filing the complaint. This one

circumstance must have instilled in the mind of the learned Magistrate the need to be careful and cautious.

12. Issue of process under Section 204 Cr.P.C., though one of daily occurrence for the learned Magistrate, is certainly one which will expose the accused to a lot of trauma and consequences. The learned Magistrate must ensure that criminal adjudicatory process is not used as a means of oppression against persons arrayed as inditees. In the facts and circumstances of this case, I have no hesitation to agree that the learned Magistrate had erred grossly in proceeding to take cognizance without and before conducting a proper enquiry under Section 202 Cr.P.C. Merely because the petitioners' complaint is belated, dismissal outright may not be justified. But that circumstance must certainly instill in the mind of the court the need to scrutinise the allegations with great care and caution. That expected care and caution has not been employed by the learned Magistrate, it is evident from the facts and circumstances of this case.

13. I shall carefully avoid any detailed discussion on merits of the acceptability of the allegations raised. Suffice it to say, I am certainly of the opinion that the learned Magistrate has not discharged his duty at the stage of Section 203/204 Cr.P.C. alertly, diligently and with the required amount

of care and caution. Though I am not accepting the prayer for quashing the proceedings, I am of the opinion that the cognizance taken must be set aside and the learned Magistrate must be directed to consider the question of cognizance after conducting a proper enquiry under Section 202 Cr.P.C. To this extent the petitioners are certainly entitled to succeed.

14. This Crl.M.C. is accordingly allowed in part. Cognizance taken against the petitioners is set aside. The learned Magistrate is directed to conduct a proper enquiry under Section 202 Cr.P.C., apply his mind to all such materials that are placed before him in such enquiry and take an appropriate decision as to whether the complaint deserves to be dismissed under Section 203 Cr.P.C. or process deserves to be issued under Section 204 Cr.P.C. The learned Magistrate must apply his mind to such materials in accordance with law and come to appropriate conclusions. The complainant and his witness who has already been examined can be recalled by the learned Magistrate to enable the Magistrate to seek clarifications and explanations.

(R. BASANT)
Judge

